

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 9 OF 2005

SHRI P. KUMARAN, PONDA GOA

....Applicant

Versus

THE CHIEF ENGINEER AND ANR.,

....Respondents

Mr. P. A. Kholkar, Advocate for the applicant.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl.
Government Advocate for the respondents.

Coram:- D. D. SINHA, J.

Date:- 25th November, 2005

P.C.

Heard Mr. Kholkar, the learned Counsel for the applicant and Mr. Kantak, the learned Advocate General for the respondents. The application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is moved by the applicant for appointment of an arbitrator. The Counsel for the applicant has contended that the applicant is a Civil Contractor. Respondent No.2 awarded work of improvement to the existing network at Kumbharjua and surrounding areas including construction of 150 m³ overhead reservoir to the applicant by work order dated July 26, 1990. On July 26, 1990 a formal agreement was executed between respondent No.2 and the applicant.

It is further contended that Clause 25 of the said Agreement is the arbitration clause which, inter alia, provides that all questions and disputes relating to the contract shall be referred to the sole arbitration of the person appointed by respondent No.1

After execution of the contract by the applicant, the applicant by

letter dated 5th February, 2004 submitted certain claims to respondent no.2. Since there was no response from respondent No.2, the applicant by letter dated 6.8.2004 requested the respondent No.1 to appoint an arbitrator within 30 days from the date of receipt of the said letter. However, respondent No.1 failed and neglected to appoint an arbitrator in terms of clause 25 despite existence of the differences and disputes to which the agreement applies and, therefore, respondent No.1 abdicated himself of the power to appoint an arbitrator under the said agreement. Therefore, the applicant has moved this Court under Section 11(6) of Arbitration and Conciliation Act, 1996.

The learned Advocate General does not dispute the factual aspect of the matter. The applicant as well as the respondent have suggested the name of Advocate G. U. Bhobe as the Arbitrator.

Since, there is no dispute about the existence of Clause 25 in the agreement, which is an arbitration clause and in view of the above referred facts and circumstances, since the respondent No.1 has failed to appoint an arbitrator within the stipulated period, has abdicated himself of the power of appointment of arbitrator, I appoint Mr. G. U. Bhobe, Advocate (Former Member of Goa Public Men's Corruption (Investigation & Inquiries) as an Arbitrator and the dispute in question is referred to him for arbitration.

With these observations, the application is disposed of.

D. D. SINHA, J.

ssm.